

Serial No.: 09/626,517

Docket No: RPC 0506

AF/3727

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Gerald R. Koefeldt et al.

Group Art Unit: 3727

Serial No.: 09/626,517

Examiner: Joseph C. Merek

Filed: July 27, 2000

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Title: Bottle Crate

Attorney Docket No.: RPC 0506

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

REPLY BRIEF

Appellant files this Reply Brief under 37 CFR §1.193 in response to the Examiner's Answer mailed January 23, 2004.

Argument

Appellant files this Reply Brief to respond to a few selected comments by the Examiner. Appellant's Appeal Brief filed June 9, 2003 otherwise sufficiently responds to the Examiner's rejections as set forth in the Examiner's Answer mailed January 23, 2004.

CERTIFICATE OF MAIL

I hereby certify that the enclosed Reply Brief (in triplicate) is being deposited with the United States Postal Service as First Class Mail, postage prepaid, in an envelope addressed to Mail Stop Appeal Brief - Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on February 17, 2004.


Konstantine J. Diamond

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Apps '249

In rejecting claim 1, the Examiner argues that the “side band member” includes the “logo as well as the pylons,” that the “pylons will nest in the above case” and therefore that the “side band member” nests in the above case. The Examiner thus implicitly admits that the “logo” portion of Apps '249 does not nest in the above case. In the drawing below, Figure 2 of Apps '249 has been reproduced stacked on itself to demonstrate the stacking of the crates in Apps '249. As is demonstrated below, the “logo” portion of Apps '249 clearly does not nest within the nesting area of the above case.

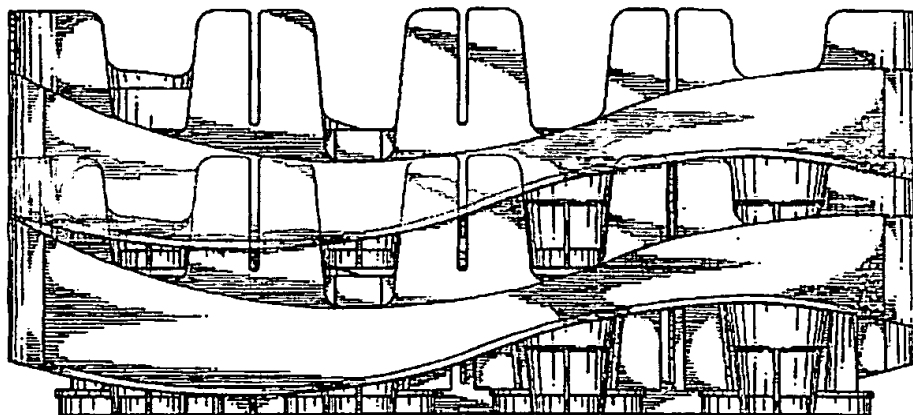


Figure 2 of Apps '249 (Duplicated to show stacking)

As explained in Appellant's Appeal Brief, the pylons are not part of the side wall. Additionally, even if they were part of the side wall, they are not received in the nesting area of the above crate, where the nesting area is defined below the lower edge of the side band member. Instead, the pylons pass behind the lower edge of the side band member, not in the nesting area.

As indicated the Applicant's Appeal brief, claims 1, 20 and 29 recite that the side band member is “matingly received” in the “side wall nesting area.” There is no contact between the logos in the nesting area in the '249 patent, as can be seen in the drawing above. The Examiner has indicated that he believes that “the logo bands matingly engage each other.” (page 5 of Examiner's Answer). This is incorrect, as shown above.

With regard to claims 3 and 4, the Examiner argues that there is a plurality of projections extending from the band member. However, the Examiner called these same

projections part of the band in order to reject claim 1 (pages 5-6 of Examiner's Answer), from which claims 3 and 4 depend. Appellant agrees that these projections extend *from* upper edges of each band member, but that means that they are not *part* of the band member. At the very least, claim 1 and claim 3 cannot both be anticipated.¹

Apps '819

The Examiner has clarified that he is rejecting the claims based upon the embodiment shown in Figures 1-13 of Apps '819. In Appellant's Appeal Brief, Appellant indicated a belief that the Examiner was referring to the embodiment in Figure 22 in the rejection of claim 1. The Examiner's clarification is appreciated.

Figure 1 of Apps '819 does not disclose a side band member having upper and lower edges each having a contour directed downwardly to form a corner band portion of a corner upper edge and corner lower edge. Referring to Figure 1, reproduced below, what the Examiner calls the "side band member" in Apps '819 is not "contoured downwardly" and does not form a "corner band portion." Apps '819 does not include anything that is "contoured downwardly" to form "a corner band portion." The lower part of the wall in Apps '819 is open in the corner, as can be seen in Figure 1 of Apps '819. Therefore, claim 1 is patentable.

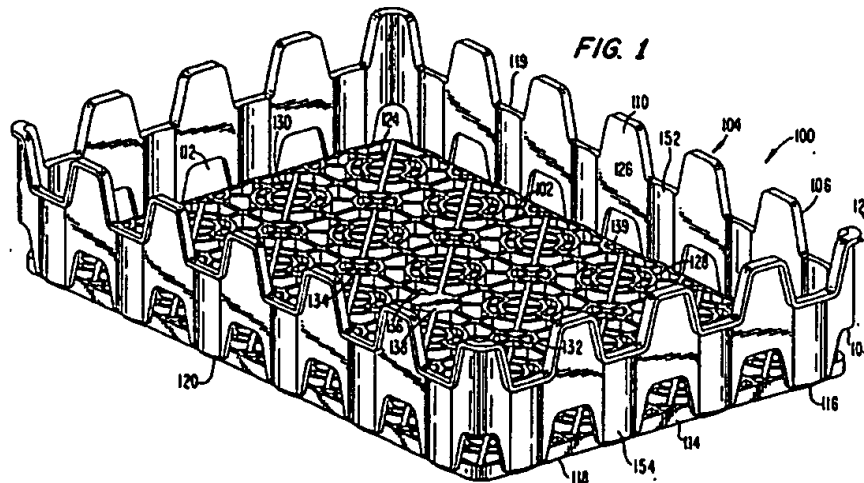


Figure 1 of Apps '819

¹ The Examiner does not reject claim 3 over the Splash Crate or Apps '819. Claim 3 is only rejected over Apps '249.

Claim 4 specifies a corner projection member extending upward from a corner upper surface. Figure 1 of Apps '819 discloses an upward projection (near reference numeral 122) in the corner, but since this upward projection is supposed to be "extending upward from a corner upper surface," this further emphasizes that the side band member does not contour downwardly to form a corner band portion below the corner projection member, as required by claim 1 (and claim 4, by reference). If the projection in the corner (near numeral 122) is supposed to extend upward from a corner upper surface, there is nothing below the projection (from which the projection extends) that is "contoured downwardly" to form a corner band portion. Therefore, claim 1 is patentable.

Splash Crate

The Examiner explained that he is considering the lip as the second wall for the claim term "double-wall construction" in claim 9. This is incorrect. The Examiner's interpretation must be reasonable and consistent with the specification. A simple lip on the wall does not make the wall have a "double wall construction," as required by claim 9. In fact, the lip is not a sidewall at all. Therefore, claim 9 is independently patentable.

The Examiner has apparently dropped his rejection of independent claim 20 in response to Appellant's arguments that the Splash Crate clearly has no "corner projection member" extending upward from a corner band portion.

CONCLUSION

For the above reasons and the reasons stated in Appellant's Appeal Brief, claims 12-31 are patentable. If any additional fees are due or extensions of time required please charge all fees to deposit account no. 50-1984.

Respectfully submitted,



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